IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

MFA.No. 1023 of 2001()

OPMV.3631/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA
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APPELLANTS/SUPPLEMENTAL PETITIONERS 2 TO 4:

1.KAMALA,W/O.NARAYANAN, AGED 35 YEARS,
KUNHIKKANDY HOUSE, P.O.IRINGATH, KOZHIKODE DIST.

2.RINJU (MINOR AGED 12 YEARS), D/O.NARAYANAN,
KUNHIKKANDY HOUSE, P.O.IRINGATH, KOZHIKODE DISTRICT.

3.THIRUMALA,W/O.KUMARAN,AGED 79 YEARS,
KUNKIKKANDY HOUSE, P.O.IRINGATH, KOZHIKODE DISTRICT.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS/RESPONDENTS:

1.P.K.VASU,S/O.V.K.ANDI VAIDYAR,
KANDIYIL HOUSE, P.O.KUNNUMMAKKARA, CHOMBALA.

2.P.K.SASI,S/O.KUNHIRAMAN,PEEDIKAKKANDY HOUSE,
CHENOLI, PERAMBRA,KOZHIKKODE DISTRICT.

3.THE NEW INDIA INSURANCE CO. LTD., BRNACH OFFICE,
VADAKARA, REP. BY ITS BRANCH MANAGER.

BY ADV. SRI.LAL GEORGE FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.1023 OF 2001 ()

Dated this the 18th day of August, 2007

J U D G M E N T

KOSHY,J.

A 45 year old man suffered very serious injuries in a motor accident on 14.5.1993. He was travelling in a bus bearing registration No.KRD.6345 owned by the 1st respondent and driven by the 2nd respondent and insured by the 3rd respondent Insurance company. He was thrown off from the bus while he was boarding it. Tribunal found that accident occurred due to the negligence of the 2nd respondent driver of the bus and bus was duly insured by the 3rd respondent Insurance company. Accident occurred on 14.5.1993 and he died on 26.12.1995 and even though application was filed in 12.9.1994, before the evidence was taken, he died and his legal representatives were impleaded. Claim was for Rs.3,79,000/- limited to Rs.2,00,000/-. But amount awarded was only Rs.18,100/- and the quantum of compensation alone

is disputed in this appeal.

2. According to the tribunal, no external injuries were there in the wound certificate. We are of the opinion that tribunal failed to consider the documents produced before it. Ext.A2 wound certificate shows that there is fracture on the femur. Ext.A3 as well as the discharge card shows that there was spiral fracture on the femur. Even though it was argued that the accident has completely shaken his life and at a very young age, within two years of the accident, he died. His death is an after effect of the accident and according to the claimants compensation should have been granted as if his death was due to accident. But no evidence was produced to show that his death has got any connection with the accident. He was married and had a child and he was also maintaining his mother aged 79. Considering these facts, we assess the monthly income at Rs.1,500/- per month. Since there was femur fracture he must be under treatment and unable to move for at least four months. For loss of actual earning, he is entitled to Rs.6,000/- as compensation. Tribunal has granted

only Rs.900/- under this head. Hence balance compensation payable under this head is Rs.5,100/-. It is true that he has not produced any disability certificate and case was conducted so badly before the tribunal. Claimants are very poor people and may be inclined to produce any evidence at this distance of time. In view of the spiral fracture of the femur he must have suffered, at least 5% disability should have been assessed. Since he was aged 15, 13 can be used as multiplier. If so, by applying a multiplier of 13, compensation for disability and loss of earning power will be Rs.1,500 x 12 x 13 x $^{5}/_{100}$ = Rs.11,700/-. Tribunal has granted only Rs.1,000/- for continuing disability and Rs.1,000/- for loss of earning power. Hence additional compensation payable will be Rs.9,700/-. For pain and suffering because of the femur fracture he is entitled to Rs.7,000/-. Tribunal has granted only Rs.2,000/- under this head. Here claimants are entitled to additional Rs.5,000/- under this head. For transporting to the hospital and back tribunal has awarded Rs.2,000/-. We are of the opinion that no enhancement is necessary. Tribunal has awarded Rs.1,000/- for extra nourishment. Rs.200/- as damage to clothing and

articles and Rs.2,000/- for mental shock and agony. Even though it was argued that compensation granted under all other heads are very meager, we are not enhancing the compensation granted under other heads. Thus additional compensation will be Rs.19,800/-. Therefore 3rd respondent Insurance company is directed to deposit the above with 7.5% interest from the date of application till its deposit. On deposit of the above, 1st appellant (wife) is allowed to withdraw 40% of the amount awarded and 10% by the 3rd appellant (mother) and balance 50% shall be deposited in the name of the child (2nd appellant) in a nationalised bank as fixed deposit and she is allowed to withdraw the same at the time of her marriage. With the above directions this appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.1023 OF 2001 ()

J U D G M E N T

18th August, 2007